IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATIONS NO.23 & 24 of 2007, 33 of 2006 and 37 & 38 of 2007

CRIMINAL REVISION APPLICATIONS NO.23 & 24 of 2007 and 33 of 2006

Mr. Damodar S. Prabhu,
A/4, Shri Om Co.op. Housing Society,
Cujira, Santa Cruz,
Ilhas, Goa. .... Petitioner

V/s

Mr. B.H. Sayed,
R/o. Nr. Gharkul Co.op. Housing Society,
Bainguinim, Old Goa,
Ilhas, Goa. .... Respondent

Mr. A.D. Bhobe, Advocate for the Petitioner.
Mr. Arun Bras De Sa, Advocate for the Respondent.

CRIMINAL REVISION APPLICATIONS NO.37 of 2007 and 38 of 2007

Shri Sayed Babalal H.,
R/at Gharkul Co-operative housing Society,
Bainguinim, Old Goa, Ilhas, Goa.
Presently residing at Navelkar Estate,
C-6-G1, Baiguinim,
Old Goa, Ilhas Goa. .... Petitioner

V/s

1. Shri Damodar S. Prabhu,
Residing at A/4,
Shri Om Co-operative Housing Society,
Cujira, St. Cruz,
Ilhas – Goa.

2. S T A T E,
Through Public Prosecutor. .... Respondents

Shri Arun Bras De Sa, Advocate for the Petitioner.
Shri A.D. Bhobe, Advocate for the Respondents.

CORAM : N.A. BRITTO, J.

DATE : 14th AUGUST, 2007

ORAL ORDER :

These revisions arise from three cases in which 4 cheques issued by the accused were dishonoured.

2. The details of the cheques and cases are as follows:

i) Cheque dated 7/11/2000 for Rs. 1,00,000/- in C.C. No. 11 of 2001,

ii) Cheque dated 7/11/2000 for Rs. 1,50,000/- in C.C. No. 12 of 2001,

iii) Cheques dated 16/09/2000 for Rs. 2,00,000/- and Rs. 50,000/- in C.C. No. 8 of 2001.

3. The said cheques were deposited by the complainant for payment but were returned unpaid and the complainant served a statutory notice dated 29/11/2000 in each of the said cases, which the accused received but did not reply and as such the complaints were filed.

4. The case of the complainant was that the said cheques were issued by way of repayment of money advanced by the complainant to the accused.

5. The case of the accused was that the accused had given 6 blank cheques to the complainant with the understanding that the complainant

would fill in the amount of Rs. 25,000/- on each of the cheques and present them in 6 different months. The accused stated that he had taken the sum of Rs. 1,50,000/- from the complainant and it is towards the repayment of the said sum that the said 6 blank cheques were given.

6. There is no dispute that the complainant is a contractor and the accused a tax consultant. The learned trial Court found that the plea taken by the accused, who is a tax consultant, was a plea which was not taken either by way of reply to the demand notice nor by way of suggestions to the complainant nor in his statement recorded under Section 313 of the Code and, therefore, doubted the veracity of the plea put forth by the accused.

7. There is also no dispute that the accused had given to the complainant in all 6 cheques and 4 of the cheques are the subject matter of the present revision petitions. One cheque was the subject matter of another case where the accused was acquitted but the acquittal has been reversed by this Court i.e. in Criminal Appeal No. 74 of 2006. The sixth case in relation to the cheque of Rs. 65,000/- was settled by both the parties on 3/06/2003. It is also an admitted position that the accused had paid Rs. 20,000/- in the case relating to the cheques of Rs. 2,00,000/- and Rs. 50,000/-, Rs. 15,000/- in relation to the cheque of Rs. 1,00,000/- and Rs. 25,000/- in relation to the cheque of Rs. 1,50,000/-. Likewise the accused had also paid a sum of Rs.

17,500/- in relation to the cheque of Rs. 4,30,000/- pertaining to which the first appellate Court had acquitted the accused and this Court has convicted the accused.

8. The learned first appellate Court referred to the presumption available to the complainant in terms of Section 139 of the Act (Negotiable Instruments Act, 1881) and observed, and in my view, rightly, that once the cheque is issued there is a presumption that the said cheque was issued in the discharge in whole or in part of debt or other liability unless the contrary is proved and that in the case at hand, the cheque was issued by the accused and that was an admitted position and so also the accused had admitted his signature. The learned first appellate Court also stated that the accused had admitted that there was an understanding that the blank cheques would be filled by the complainant and, therefore, the accused could not make a grievance about the filling of the cheques by the complainant. The learned first appellate Court also observed, and again in my view rightly, that the Act does not require that the cheque should be filled in by the drawer himself and even if the entire cheque is not filled by the maker or the drawer, the presumption under Section 139 would still be available. In this context, the learned first appellate court referred to the case of ***Satish Jayantilal Shah V/s. Mashruwala & Anr. (1996 Cr.L.J. 3099)*** wherein the Gujarat High Court had stated that no law provides that in case of any negotiable

instrument entire body has to be written by maker or drawer only. What is material is signature of drawer or maker and not the body writing and hence the question of body writing has no significance. The learned first appellate Court also referred to the case of ***K. Bhaskaran V/s. Sankaran Vaidhyan Balan & Anr. (1999(4) ALL MR 452)*** wherein the Apex Court had observed thus:

> As the signature in the cheque was admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability and the burden was on the accused to rebut the aforesaid presumption.

9. Counsel on behalf of the petitioner/accused contends that the complainant did not mention the dates of the loans advanced by him to the accused. Learned Counsel further submits that though separate notices were sent, the complainant chose not to make mention of other notices. Learned Counsel further submits that in the absence of the dates there is a doubt about the giving of the loan by the complainant to the accused and as such it is defence plea which sounds more probable. On the other hand, Counsel on behalf of the complainant submits that in the C.C. No. 11 of 2001, the accused had taken the defence that the subject cheque was robbed from his possession and in C.C. No. 8 of 2001, the accused had taken the plea that the said cheque was given by him not to the complainant but to one Pandurang

Naik and these inconsistent pleas, only show the falsity of the case of the complainant.

10. Admittedly, although the accused received the notices on 4/12/2000, the accused who is a tax consultant chose not to reply to the same and in case the accused had given the said blank cheques, as pleaded by him and the complainant had misused them, then it was certainly expected of the accused to have reacted immediately. On behalf of the complainant, reliance has been placed on the case of ***Gorantla Venkateswara Rao V/s. Kolla Veera Raghava Rao & Anr. (2006 CRI.L.J. 1)*** wherein Andhra Pradesh High Court has stated that failure on the part of the accused to give reply to the legal notice, issued by the complainant is one of the strong circumstances to draw an inference that the accused borrowed the amount from the complainant and the cheque was issued towards part payment of an legally enforceable debt. Learned Counsel on behalf of the complainant has also placed reliance on the case of ***Girishbhai Natvarbhai Patel V/s. State of Gujarat 7 Anr. (2006 (3) ALL MR (JOURNAL) 51)*** and submitted that as the accused made part payment of the amount due on the cheques, it reflects on the falsity of the case of the accused.

11. Admittedly, the accused chose not to reply to the statutory notice sent to him and received by him on 4/12/2000. The very defence taken by the

accused that he had given 6 cheques towards the amount of Rs. 1,50,000/- from the complainant with an understanding that the complainant would fill in each of the cheques for Rs. 25,000/- and present them in 6 different months, sounds to be highly improbable. The accused who is a tax consultant, in case his plea was true, would have certainly written the amount in the cheques as well as the dates of the months in which the said cheques were required to be presented for payment and would not have left the same to be done by the complainant. That apart and as rightly observed by the learned first appellate Court, even that plea which otherwise appears to be improbable was not put by the accused to the complainant nor was it taken in the statement recorded under Section 313 of the Code, but came for the first time only in the defence evidence of the accused and that only again reflects the falsity of the said plea and makes it clear that it was taken as an afterthought.

12. In my view, both the Courts below have rightly convicted the accused under Section 138 of the Act.

13. In C.C. No. 8 of 2001, the learned trial Court had sentenced the accused to undergo SI for 6 months and to pay compensation of Rs. 4,75,000/- and in default to undergo SI for 3 months. The learned first appellate Court reduced the substantive sentence till rising of the Court and

the compensation to Rs. 2,30,000/-, in default to undergo SI for 3 months.

14. In C.C. No. 11 of 2001, the trial court had sentenced the accused to undergo 3 months SI and to pay compensation of Rs. 1,90,000/-, in default to undergo SI for 1 month which the first appellate Court reduced the substantive sentence till rising of the Court and compensation from Rs. 1,90,000/- to Rs. 80,000/-, in default to undergo SI for one month.

15. Counsel for the complainant has filed revision petitions being Criminal Revision Applications No. 37 of 2007 and 38 of 2007 for enhancement of the said sentence. This Court in ***Basavraj D. Allayyanavar V/s. Santosh Kapadi (2007 (1) BOM C.R.(Cri) 1028)*** had referred to the case of ***Suganthi S. Kumar V/s. Jagdeeshan (AIR 2002 SC 681)***. That was the case where amount of the cheque was Rs. 4,50,000/- for which the learned Magistrate had awarded imprisonment till the rising of the Court and fine of Rs. 5,000/-, and in such a situation the Hon'ble Supreme Court had found the sentence imposed as flea bite. This Court had noted that Section 138 of the Act provides for imprisonment or fine which may extend to twice the amount of the cheque or both and the least the Courts below ought to have done whilst imposing sentence is to ensure that the complainant was compensated at least with the amount due by the accused on the cheque issued by him to the complainant and that should be the rule unless there are good reasons to depart from the same. This Court had also observed that though no formula

of a full proof nature was possible to be laid down in awarding appropriate sentence, the sentence should be proportionate to the crime committed and the same should be awarded by taking into consideration the facts and circumstances of each case. It is not only the rights of the criminals which are required to be looked into at the time of imposition of the sentence, but also of the victims of the crime and the Society at large, also by considering the object sought to be achieved by the particular legislation. Sentence to be imposed should also have a deterrent effect.

16. At this stage the learned Counsel on behalf of the complainant seeks leave to withdraw the revision petitions filed by him for enhancement of sentence. Allowed to be withdrawn.

17. In view of the above, the revisions filed by the complainant as well as by the accused shall stand dismissed. Bail bonds of the accused shall stand cancelled. The complainant is at liberty to apply for withdrawal of the compensation deposited by the accused.

N.A. BRITTO, J.

NH/-